

## **Planning Board Meeting**

**Minutes of March 21, 2001**

**APPROVED April 18, 2001**

The meeting was called to order by Chairman Robert White at 6:30 at the Harpswell Community TV Studio, Community Drive, Great Island. White then introduced the other members present: James Henderson, Roland Weeman, Linda Toothaker, John Papacasma, and associate member Howard Nannen, whom White said could discuss the issues before the Board this evening, but not vote as all Board members were present. Contracted planner Tony Dater was also present. The meeting was taped and broadcast live on the Harpswell Community TV station.

**Minutes of February 21, 2001** were reviewed and accepted as written, with the motion by Nannen, seconded by Weeman. **Carried 5-0.**

**The published agenda for the meeting was:** Public Hearing- Envision Realty, L.L.C., Proposed Nine Lot Subdivision, Skolfield Farm Shores, Harpswell Neck Road (Route 123), Harpswell, Tax Map 1-3 (at the Brunswick town line), Shoreland Residential and Interior Districts. *Old Business* (1) Envision Realty, L.L.C, Subdivision Plan Review, Tax Map 1-3, Shoreland Residential, Skolfield Farm Shores, Harpswell (Return from 02/21/01 meeting). *New Business* (2) C R Rooney, L.L.C., Site Plan Review, Tax Map 13-9, Harpswell Neck Road, Harpswell. (3) Donald and Roberta Robertson, Reconstruction of Non-Conforming Structure, Shoreland Residential, Tax Map 30-40, Robertson Road, Orr's Island, Harpswell.

Weeman moved to recess the Planning Board meeting until after the public hearing (concerning Envision Realty, L.L.C.'s proposed Skolfield Farm Shores Subdivision). Papacasma seconded. **Carried 5-0.**

### **Public Hearing**

Dawnna Black called during the hearing to state that she had sent the same packet to the Brunswick Planning Board as had been sent to the Harpswell Planning Board and that all abutters had been notified by certified return receipt mail. The hearing was announced in "The Times Record" on March 14, 2001 and March 19, 2001.

Tom DuBois, of Main-Land Development Consultants, Inc, representing Envision Realty, L.L.C., presented some of the events that have occurred since the last Board meeting on February 21, 2001 and they include the following: (1) Envision Realty, L.L.C. has received a letter from Earle G. Shettleworth, Jr., Director of The Maine Historic Preservation Commission, stating that there are no known prehistoric archaeological sites on the proposed subdivision property, etc.; (2) The nitrate levels on lot #4 are acceptable as set forth in the nitrate study that has been done; (3) The Planning Board had requested that Harpswell Codes Enforcement Officer Douglas Webster visit the site and determine the ROW distance to the Normal High Water (NHW) on lots #6, #7, and #8 but this has not been done yet (due to snow cover); (4) Mr. Paul Driscoll, Esq., Envision Realty, L.L.C.'s lawyer, and Attorney John C. Bannon, Town of Harpswell's lawyer for this Planning Board issue, have submitted their written legal opinions regarding the farmhouse rental units, and lot #9; (5) Envision Realty, L.L.C still does not believe that a Home Owner's Association is necessary; (6) The maximum sizes of the houses will be written into the new covenants; (7) The guest houses will be removed from the covenants; (8) The screening trees have been denoted on the new Site Plan Map; (9) There is a revision on the Site Plan Map concerning the flood zone as the bench mark has been found and carried to the sea levels; and (10) As stated in Planner Tony Dater's March 14, 2001 memo, Main-Land Development Consultants, Inc. has proposed to connect the driveway of proposed lot #9 to the proposed new subdivision road some distance back from Rt.123 and

this would eliminate the need for a double-wide curb cut onto Rt. 123. White told DuBois to make sure that the Bartons were aware of the change.

Attorney Andrews Campbell is representing Barbara Barton and Carolyn Skolfield. He stated that any approval the Harpswell Planning Board grants to Envision Realty, L.L.C. should be done in conjunction with the Brunswick Planning Board as he believes part of Envision Realty L.L.C.'s property is in Brunswick and that the location of the north line property pin is questionable. He asked the Board to investigate the condition of the rental units in the farmhouse and to require that they be up to code. He reminded the Board that the farmhouse is on The National Register of Historical Sites. He went on to note that part of the Skolfield Farm property is listed as a Native American carrying place in "History of Brunswick, Topsham, and Harpswell, Maine" (by George Augustus Wheeler, MD and Henry Warren Wheeler, copyright 1878 by Alfred Mudge and Sons, Boston), and is noted on an 1879 map as "Old Carrying Place". He said the Native Americans traveled over land from Skolfield Cove to Middle Bay on their annual migrations to Cape Cod. He has several concerns and questions, including the following: (1) Will a landowner committee protect the archeological sites and how will all the owners agree on the issues? (2) Is the road design accurate and is the number of vehicles per day estimate accurate? (3) Where is the fireplug? This is a historical building and a better fire plan is required. (4) Where are the sidelines on the entrances and how wide a swing is there? A sound engineering analysis is needed. The Maine Dept. of Transportation relies on the Planning Board now. (Weeman stated that the new plan submitted by Envision Realty, L.L.C. denotes a change, that there is one entrance onto Rt. 123 instead of two.) (5) How can the Board approve the proposed subdivision when there is an adverse possession claim by the Bartons? The Bartons have been haying certain portions of the farm for many years and there is a question of good title. (Linda Barton used the map provided by Envision Realty, L.L.C. to show the Board the portion of the property the Bartons have been using, including the Right of Way, to which they claim possession.) (6) Are the wastewater disposal systems sufficient? (White said the Board has the HHE-200 forms for each proposed lot.) (7) There is a history of people dumping toxic and hazardous waste such as car batteries and pesticides on the shore of the property. There are many streams and ponds on the property and the marsh near lot #8, which may also be affected by the hazardous waste, is on the National Wetland Inventory. (8) What about the 100-year flood plan? Floods come all the way up to Rt. 123 at least once a century. Is it wise to put nine residences there?

Attorney Campbell continued with the following concerns and questions: (9) What about the guest houses still listed in the covenants? (White stated that the guest houses are not allowed and will be removed from the covenants.) (10) Carolyn Skolfield's ROW was never intended to be used as a road and she believes that the deed states that John T. Skolfield, Sr.'s intention was that the ROW (part of which Envision Realty, L.L.C. would be developing in the proposed subdivision) not be used until at least twenty-five years after his death (1992). Envision Realty's plan would encroach upon and overburden the ROW. (11) Each of the four units in the farmhouse must have 80,000 sq. ft. according to the Subdivision Ordinance. (12) The court will require the Board to interpret any ambiguities. (13) Barbara Barton would like a firewall in the farmhouse. (14) There is a dangerous dip on Rt. 123 just before the proposed entrance, which limits the site distances of motorists.

Arthur Dodge, Chairman of the Harpswell Shellfish Committee, stated that he has concerns about the impact of the proposed subdivision and subsequent raised nitrate levels on the clam flats and habitat in Middle Bay. He has requested a copy of the Nitrate Nitrogen Calculations provided to the Board by Envision Realty, L.L.C. which Debora Levensailor, Harpswell Planning Assistant, will provide.

Linda Barton, Harpswell resident, stated that there is a well-known Native American carrying place on Envision Realty, L.L.C.'s land and she submitted copies of a map dated 1879 which clearly shows and documents the old carrying place as being located on the Skolfield Farm, on lot #8 of the proposed subdivision. She pointed out historical Native American encampments and gravesites, which were located near the carrying place and told of how Native Americans continued to visit this site until the 1950s, when they came by car. People often currently stop by to visit the site.

Clive Tillotson, Harpswell resident, stated, 'I'm still not convinced about this high water tide. There are a lot of things here that are iffy, things like the high water mark and the right of way questions. I know the property on the other side of that right of way goes with this farm because I used to hay the area...I know it goes down to that point...It's obviously pretty clear that people in Harpswell don't want these developers here. I've never seen such a good turn out. I don't think any decision ought to be made. I know they're anxious. The other day he (Tom DuBois) said, 'You have forty-five days.' I say, 'Back off! They don't have to have a decision right now!' It's possible that maybe a number of people can get together and buy this back from them...and they can go on their way home. We can buy it back from them and then everybody will be happy down here in Harpswell!'

Walter Phillips, Harpswell resident and representative of the Harpswell Land Trust, stated, 'The Land Trust has talked about buying lot #8 and it would depend on what monies they would require... David Hackett, president of the Harpswell Historical Society, called me and said that he is definitely aware of Indian artifacts that have been found on that property (Envision Realty, L.L.C.'s property). He wanted it known that it is an important archeological site.' White said, 'It's not on the State list of archeological sites.' Linda Barton responded, 'The State told me that sometimes they don't list known archeological sites because they don't want people poking around them.' Walter Phillips continued, 'We do have a real interest in preserving the view there, and the bay (Middle Bay)... We'd be interested in taking donations... The Trust could not do it without significant help from the townspeople.'

Henderson stated that more specific information is needed to determine where the significant archeological sites are located. Walter Phillips said that there are some people who can assist the Board with the matter, namely Lee Hamilton of the University of Maine Archeological Department. He is familiar with our area. Mr. Phillips stated that the more development there is, the more distant they (the historical archeological sites) become to us. He said that there is a Native American Indian burial ground located about a quarter of a mile down the road, near the Lowell Trust Farm.

George Barnes, Harpswell resident, said that the proposed subdivision area is indeed an archeological site. His great great grandfather, Henry Barnes owned property just south of the Skolfield Farm. In November 1861 he found six Native American skeletons and several artifacts, including arrowheads and wampum beads, on his pond on Barnes Point, which is near the proposed subdivision property. This event is documented in Wheeler's history book, in the June 1869 issue of Historical Magazine, and in a the 2000 edition of 'Discover Maine'. In 1869 Barnes plowed up many more artifacts such as belts made of copper tubes attached to each other with soft leather thongs. This event was also reported in the June 1869 issue of Historical Magazine and in the 2000 edition of 'Discover Maine'. Mr. Barnes said that if one goes north, from Barnes Point toward Envision's property, he would reach Mount Spring, where Native American artifacts have also been found. He stated, 'I question The Maine Historic Preservation Commission's stance on this. A preliminary archeological review should be done!'

Tom DuBois distributed copies of a letter from The Maine Historic Preservation Commission, dated March 20, 2001, to the Board. Henderson read the letter into the minutes. The letter states, "...There are no known prehistoric (Native American) archaeological sites on the property. However, portions of the property are judged sensitive for Native American sites, and the property has never been surveyed by a professional archaeologist. Sensitivity for Native American archaeological sites is established on the following basis: 1) the landforms adjacent to any salt water shoreline with reasonable drainage and moderate to low slope are sensitive for prehistoric settlement; and 2), the small stream valley that approximately follows the Harpswell-Brunswick town border and forms part of the eastern border of the proposed subdivision, is marked on an 1879 map as "The Old Carrying Place". We presume that this would have been a canoe carry from Harpswell Cove to Middle Bay Cove, used by Native Americans before European arrival, no matter what its use after European arrival. Based on these two sensitivity factors, we strongly recommend a Phase I archeological survey for Native American sites of prehistoric and early Contact period age on all of proposed lot #8, and within 50 meters or 170 feet of the highest tide line along the shoreline of all the other lots... The proposed access corridor within 200 feet of the nearest standing Merriconegan Farm building should be tested for outbuildings and other historic archeological features... Merriconegan Farm was listed in the National Register of Historic Places on June 15, 1979. Its architectural significance stems from the expansive and unequaled collection of connected buildings of which it is comprised. Furthermore, this impressive example of connected architecture is set within open meadows that preserve the historic setting of the complex."

Carroll Pennell, a Brunswick resident, stated that he lives on Middle Bay, opposite the Skolfield Farm, and has a good view of the property from the second floor of his home. His family has lived there since the 1760s. He said that the proposed subdivision will ruin the view and Pennell Cove and he is very concerned about the nitrate loading of Middle Bay from the proposed subdivision. He said that the town of Brunswick requires everyone to set back 250'. He stated, "I think the people of Harpswell should keep that pristine area of the bay."

Carol Lestock, resident of Brunswick, is a former resident of the Skolfield Farm. She stated, "It makes me sick to see what's proposed! Their guns are loaded and they know what they're doing!...I hope we can stop them!...This is the "Gateway to Harpswell" and it should be preserved!...Hopefully, we can fight these guys!"

Donna Frisoli, a Harpswell resident, asked the Board about Phase I of the recent water and septic study that Wright-Pierce of Topsham conducted for the Town of Harpswell. She wanted to know if the study had determined that the size of the proposed subdivision would be detrimental to the area. White said that the Board had received a septic study for each lot from the Envision Realty, L.L.C.'s engineer. Donna wanted to know how the studies compared with the water and septic study. White said the Wright-Pierce study was not conclusive. Donna asked if the information from the water and septic study could affect the maximum allowable house sizes. Papacosma said it would not, but that the study did show that there are problems in town with thin soils and scarcity of water. However, he said that the study did not indicate a problem in the area of the proposed subdivision. Donna voiced concerns about the density levels of the proposed subdivision affecting the area and thinks that it would be a shame not to be able to use the water and septic study. White said that the study had to be written into a town ordinance. Henderson stated that the Board can only determine if a proposal meets an ordinance and applicable laws.

Attorney Campbell stated that he agrees with Harpswell's attorney, Mr. Bannon, concerning the Subdivision Ordinance requiring 80,000 sq. ft. for each of the rental units in the farmhouse.

Department of Transportation that the Planning Board has no objections to issuing a permit.” Weeman seconded.  
**Carried 5-0.**

The Board discussed #2 of Dater’s memo, Compliance Recommendations - Maintenance of the Proposed Subdivision Road (The Ordinance requires a homeowners/landowners association for commonly owned property in a subdivision). Papacosma said, “We have a situation here.” He said there is a common road, trees, etc. to be taken care of in the proposed subdivision. He wanted to know who would maintain the common spaces, trees, etc. The Board reviewed the proposed subdivision covenants. Weeman wanted to know how Envision Realty, L.L.C. would assess fees and Blair said there would be an equal fee for each lot. White said that construction trucks will damage the roads and wanted to know who would be responsible to repair them. Blair said Envision Realty, L.L.C. would. DuBois said that Envision Realty, L.L.C. would have a homeowners/landowners association if the Board required one. Blair said that if they had an association the covenants would be titled ‘By laws and Declarations of Skolfield Farm Shores’ and the association would get a tax identification number from the State since it would be a corporation. He also stated that the covenants would be written into the homeowners’ deeds.

Nannen said, “If the Town has to communicate with the subdivision, we would need to be certain that the Town could step in for any enforcement situations. If you don’t have an association, we’d have to contact all eight homeowners, not one association. The Town would have to be able to get fire engines and ambulances in.” Blair said, “Think of the motivation. The Town would proceed against the individual homeowner...I have never seen an association work.” Weeman stated, “Everyone needs to think about this.” White said the Board is deferring a decision concerning the homeowners/landowners association.

Weeman left the meeting at 9:50pm and White appointed Nannen to take his place and to vote.

The Board discussed the wetland issue and which ordinance governs it. Henderson asked, “If the Subdivision Ordinance governs it and it is more restrictive, why doesn’t that apply?” Henderson referenced Subdivision Ordinance 9.10 (Impact on Wetlands – “Subdivision plans shall be designed to minimize impact on wetlands. Septic systems and structures must be set back at least two hundred-fifty (250) feet from the edge of moderate or high value wetlands...”) Henderson stated, “Within some ordinances you can distinguish high value wetlands.” Blair stated, “You can’t apply the Subdivision Ordinance here.” Henderson stated, “I want the Planning Board to ask our legal counsel.” Nannen will also speak with the Codes Enforcement Officer concerning the issue.

The Board discussed the information that they were requiring from the last meeting as referenced in the notes of February 21, 2001. After determining that they had already covered points 1 – 10, the Board moved on to point #11 which concerns lot # 9 and whether or not it is part of the proposed subdivision. Attorney Paul Driscoll, Envision Realty, L.L.C.’s attorney, said, “I stated my opinion concerning Attorney John Bannon’s letter. I pointed out that we are not submitting lot #9 as part of the subdivision...The issue will be if it’s a Codes Enforcement issue or not.” Henderson said that the creation of a subdivision leaves the residual of lot #9 smaller than it should be. White stated, “You can’t cut your land up and leave non -conforming land.” Blair said, “If it’s not in a subdivision, it doesn’t have to comply with the Subdivision Ordinance regarding density.” Papacosma stated, “I don’t think you should be allowed to do what you’re doing, to leave lot #9 as non -conforming.” Blair said, “We have an eight lot subdivision which leaves a four acre lot with a dwelling on it. If that’s a single family dwelling it conforms. If not, it still conforms. We suggest that we go forward with the subdivision, retain the lot, and go to the Codes Enforcement Officer and ask what we can do with the house. If the Codes Enforcement Officer says it’s a dwelling for one or two families, fine. It’s not really a Planning Board issue. It would be under the Basic Land Use Ordinance, 40,000 sq. ft. per dwelling unit.” DuBois stated, “We’re giving the house the required road frontage and making it more conforming.”

Henderson said, “We need to ask if Mr. Bannon agrees with Envision’s stance.” White agreed. Papacosma read the Basic Land Use Ordinance definition (in the Definitions Addendum) of a Multi-Unit Residential Structure which states, “a residential structure containing three (3) or more dwelling units. The placement of three (3) or more units or the division of an existing structure into three (3) or more dwelling units requires subdivision review under state

and local law.” He said it (lot #9) is too small for four units. White said the Board would go back to Attorney Bannon for his opinion. Blair stated, “We’re happy if it’s a duplex only, if that’s the Board’s decision... We’d be happy to evict the tenants right now!” Dater told the Board that they could ask the applicant for a continuation of thirty days due to the Board’s requiring more information. Blair said that they would grant more time to the Board and that they want to move toward approval on April 18<sup>th</sup>. DuBois stated, “We want the Board to approve our application on the condition that the archeologist’s report says there is no archeological evidence.”

Regarding the dispute over the right of way, White stated, “You don’t have a right to put a road in there on Carolyn’s right of way. Blair said, “We have the same rights over her land that she has over our land.” White said that there is a dispute over the location of the right of way, as the Bartons believe that on Envision Realty L.L.C.’s plan, the right of way is fifty (50) feet too far to the North.

**Other points of discussion followed: (1) The Board requested that Dater obtain a letter from the Brunswick planner stating Brunswick’s opinion regarding the wetland (the marsh near lot #8); (2) White said that one of the conditions of approval of the proposed subdivision would be that Envision Realty, L.L.C. remove the duplex on lot #2. (3) White stated that the Board needs to discuss the Approval Standards of Subdivision Ordinance Section 9.**

**In Summary – The Board is requiring the following information:**

1. An independent archeologist will be retained and the Board will review the report as to whether or not there are any archeological significances, especially regarding Native American carrying places, graves, and artifacts on the proposed subdivision property.
2. A written statement from the Harpswell Historical Society regarding any known archeological significances on the proposed subdivision property.
3. The Maine Department of Environmental Protection’s rating of the marsh near lot #8, which may require a 250’ setback.
4. The Brunswick planner’s opinion regarding the marsh and Brunswick’s policies regarding the setback.
5. The Board is requesting that Linda Barton submit a map showing the location of all springs, wells, streams, etc. on the proposed subdivision property, and the abutting property, which may be directly affected by the proposed septic systems.
6. The CEO’s determination of the 75’ setback from NHW (in the area of the gully).
7. The Board wants to see new covenants with the guest houses removed and with the maximum sizes of the houses included.
8. Mr. White requests the final determination of the Brunswick property line.
9. The Board will discuss whether or not they will require a homeowners/ landowners association.
10. Mr. Henderson requested legal counsel regarding the wetlands issue and whether or not the Board can apply the Subdivision Ordinance to the proposed lot #8.
11. The Board is requesting Attorney Bannon’s opinion on (1) whether or not lot #9 is a Planning Board issue, and (2) if the Board approves the application, would Envision Realty, L.L.C. go to the CEO and ask what could be done to the farmhouse to make it conforming?
12. Dater states that Envision Realty, L.L.C. would need to submit a waiver request (9.8.1) for proposing to leave some existing overhead wires outside of the proposed new subdivision road.

White made a motion to adjourn the meeting. Henderson seconded. Meeting adjourned at 10:40pm.

Respectfully Submitted,

Debora A. Levensailor  
Harpswell Planning Assistant